

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF WASHINGTON

In the Matter of the Application
regarding the Conversion and
Acquisition of Control of Premera Blue
Cross and its Affiliates

Docket No. G02-45

SPECIAL MASTER’S ORDER ON
WSMA’S OBJECTIONS TO
PREMERA’S PROPOSED
REDACTIONS TO DEPOSITION
TRANSCRIPT OF PREMERA EXPERT

On December 3 and 4, 2003, the Washington State Attorney General’s Office and the WSMA conducted the deposition of Thomas McCarthy, PhD, an expert retained by Premera to evaluate economic and anti-trust aspects of the proposed conversion. On January 6, 2004, Premera requested that certain portions of Dr. McCarthy’s deposition transcript be redacted and designated Attorneys’ Eyes Only (“AEO”), as containing confidential or proprietary information. The WSMA responded with “WSMA’s Objections to Premera’s Proposed Redactions to Deposition Transcript of Premera Expert,” dated January 28, 2004. Premera replied with “Premera’s Response to WSMA’s ‘Objections to Proposed Redactions’ of McCarthy Transcript,” dated February 5, 2004.

The following matrix identifies the portions of the transcript at issue and sets forth my rulings, which are based on the statutes and orders discussed in previous redaction rulings. (See “Special Master’s Order on Objections to Premera’s ‘AEO’ and ‘Confidential’ Designations, dated November 17, 2003.) Where the “Rulings” column indicates “withdrawn,” Premera has withdrawn its former objection to disclosure, and the referenced material shall be disclosed. Where the Rulings column indicates “disclose,”

I have overruled Premera's objection to disclosure, and the referenced material shall be disclosed. Where the rulings column indicates "sustained," I have sustained Premera's proposed redaction.

Rulings sustaining Premera's proposed redactions are without prejudice to later disclosure of the redacted material if 1) the Commissioner determines under RCW 48.31C.130 that such disclosure is appropriate; such material or related material is demonstrated to have been made public (see Paragraph 6(b), Protective Order); or 3) for other good cause shown.

DATED this 9th day of February, 2004.

George Finkle
Superior Court Judge, Retired
Special Master

AEO Designations for the Deposition of Thomas McCarthy

Volume, Page/Line	Ruling
Vol. 1, p.21/1.20-p.22/1.1	Withdrawn. (Premera does not, by withdrawing this or other designations of Dr. McCarthy's deposition transcript, waive its AEO designation.)
25/13-29/12	Disclose. This passage is a general discussion of the background of Dr. McCarthy's engagement as an expert, a discussion of the scope of his expected expert analysis, and an affirmation of his awareness of another expert witness. The passage does not disclose significant proprietary data or trade secrets.
124/11-129/16	Disclose. This passage is a general discussion of a portion of Premera's underwriting manual and certain underwriting provisions. The passage does not disclose significant proprietary data or trade secrets.
220/9-227/9	Disclose. This passage discusses only the general nature and format of the data presented in Deposition Ex. 12, but does not discuss the substance of the data. The passage does not disclose significant proprietary data or trade secrets.
223/24 "First Choice column"	Disclose. This line, included in the previous passage, discloses the payment by First Choice for a particular CPT. That First Choice (not a party to this proceeding) might, as WSMA states, prefer not to have this information made public, is not a sufficient showing to establish that this line discloses significant proprietary data or trade secrets.
231/15-240/14	Sustained. Though this passage in part discusses only the general nature and format of Deposition Ex. 12-18., it also discloses many specific calculations of the ratios of Premera's payments for identified CPT procedures to the (commercially sensitive) specified payments of other insurers for such procedures. This passage discloses significant Premera proprietary data or trade secrets. Disclosure of the portions of this passage that do not include significant proprietary data or trade secrets would not be meaningful.
Errata Sheet, p.8: Dep. Transcript at 223/20	Sustained. See 231/15-240/14.
234/21	Sustained. See 231/15-240/14.
235/2	Sustained. See 231/15-240/14.
236/7	Sustained. See 231/15-240/14.
236/10	Sustained. See 231/15-240/14.
236/13	Sustained. See 231/15-240/14.
Vol. 2, 264/21-25	Sustained. This passage is the AAG's representation as to what he believes another Premera witness told him about Premera's area factors and not Dr. McCarthy's testimony. (Dr. McCarthy states that he hasn't heard of this.) A question does not have testimonial value. Further, if the question is based on correct information, it would appear to disclose significant proprietary data or trade secrets regarding Premera's provider payments.
270/2-272/6	Sustained. This passage includes significant proprietary data and trade secrets related to Premera's provider payment rates. Line-by-line edits would not be appropriate. Deposition answers cannot be considered in isolation from the questions to which they respond (cf. expert reports).
270/17, 23, 24	Sustained. See 270/2-272/6.
271/1	Sustained. See 270/2-272/6.
282/9-286/11	Disclose 283/6-284/7. This passage discusses Medicare GPCI factors, separate from Premera payment rates. Sustained as to the balance of this passage, which reveals Premera data related to Premera's provider payments. These data constitute significant proprietary data and trade secrets.
462/7-464/6	Sustained. This passage discusses Premera's business plan's expected medical loss ratio ranges, which constitute significant proprietary data and trade secrets. The final question assumes the expected ratios.

468/16-471/9	<p>Withdrawn as to 470/3-18. Disclose 468/16-470/2. This passage is a general discussion of the organization of Deposition Ex. 27 and Table 5.3 that does not reveal significant proprietary data or trade secrets.</p> <p>Sustained as to the balance of this passage, which relates to Premera's market share. This is significant proprietary data and trade secrets.</p>
477/4-486/14	<p>Disclose 477/4-480/1. This passage is a discussion of the format and general contents of deposition exhibits and does not reveal significant proprietary data or trade secrets.</p> <p>Sustained as to 480/2-481/4. This passage reflects Premera's provider fees, expressed as a percentage of Medicare fees.</p> <p>Disclose the balance of this passage, which discusses Regence data and further generally discusses deposition exhibits without revealing significant proprietary data or trade secrets.</p>
Exhibit 3	<p>Disclose. This Meeting Agenda identifies the areas to be discussed, without revealing the substance, and does not constitute proprietary data or trade secrets</p>
Exhibit 27— Table 5-3 from PwC Economic Impact Analysis	<p>Withdrawn.</p>